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ORDINANCE NO. 91-34

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO BE ENTITLED "PALM BEACH COUNTY MINORITY/WOMEN BUSINESS ENTERPRISE ORDINANCE;" SETTING FORTH A PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROGRAM ADMINISTRATION; PROVIDING FOR COUNTY IMPLEMENTATION; PROVIDING FOR WAIVERS; PROVIDING FOR GOALS; PROVIDING FOR GOOD FAITH EFFORTS; PROVIDING FOR CONTRACT AWARD REVIEW; PROVIDING FOR THE INCLUSION OF M/WBE REQUIREMENTS IN CONTRACT DOCUMENTS; PROVIDING FOR CONTRACT COMPLIANCE REQUIREMENTS; PROVIDING FOR THE RANKING OF RESPONSIVE BIDDERS; PROVIDING FOR THE DISQUALIFICATION OR REJECTION OF BIDDERS; PROVIDING FOR A PROMPT PAYMENT POLICY; PROVIDING FOR PROCUREMENT PROCEDURES; PROVIDING FOR CONTRACTING OPPORTUNITIES IN PROFESSIONAL SERVICES; PROVIDING FOR A BID PREFERENCE SYSTEM; PROVIDING FOR A FUTURE REVIEW OF THE NEED FOR SET ASIDES; PROVIDING FOR CERTIFICATION/APPEAL; ESTABLISHING THE M/WBE ADVISORY COMMITTEE; PROVIDING FOR AVAILABILITY ANALYSIS; PROVIDING FOR A SUNSET DATE; REPEALING PALM BEACH COUNTY ORDINANCE 88-4 AND 91-27; RESCINDING RESOLUTIONS R 76-1491, R 88-1680, R 89-2129 AND R 91-109; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the United States Supreme Court's decision in the case of City of Richmond v. J.A. Croson Company, 488 U.S. 469, 109 S.Ct. 706 (1989), establishes new standards by which the constitutionality of local governments' minority/women business enterprise (M/WBE) programs will be judged; and

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WHEREAS, the Supreme Court held in the Croson case that a local government may maintain a M/WBE program if such a program is necessary to assure that it is not a "passive participant" in a system of racial exclusion practiced by market area industry businesses; or if such a program is necessary to eradicate the vestiges of its own past discrimination; and

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WHEREAS, the Board of County Commissioners of Palm Beach County, Florida, on November 28, 1989, contracted with MGT of America, Inc. to conduct a disparity study to determine if the County's past procurement practices, or if market area industry practices, were discriminatory and to recommend corrective actions to remedy any resulting disparity; and

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WHEREAS, MGT of America, Inc. submitted the Palm Beach County

1 Disparity Study Revised Final Report to Palm Beach County on
2 January 17, 1991; and

3 **WHEREAS**, the Major Study Conclusions of the Palm Beach County
4 Disparity Study, as stated by MGT of America, Inc. were:

5 1. *Market area industry practices are discriminatory towards
M/WBES.*

7 2. *The County has been a passive participant in
discrimination against M/WBES.*

9 3. *There is a disparity between the number of M/WBES who are
10 qualified to perform County construction contracts and the
11 percentage of minority and women firms actually participating in
12 construction contracts.*

13 4. *There is a disparity between the number of M/WBES who are
14 qualified to perform County professional services contracts and the
15 percentage of minority and women firms actually participating in
16 professional services contracts.*

17 5. *There is a disparity between the number of M/WBES who are
18 qualified to supply goods and services to the County and the
19 percentage of minority and women firms actually participating in
20 purchases.*

21 6. *Historical data shows that during the five year period (FY
22 1981 to FY 1985) prior to the M/WBE Program in Engineering,
23 minority and women-owned construction businesses were minimally
24 involved as prime contractors in contracts awarded through the
25 formal bid process. Available M/WBE construction firms received
26 less than 1% of all construction contracts during the five year
27 period, except for Hispanics in FY 1984.*

28 7. *Historical data shows that during the four year period (FY
29 1981 to FY 1984) prior to the start of the M/WBE Program in
30 Purchasing, minority and women-owned businesses received less than
31 2% of all purchases let by the County.*

32 8. *The data shows that after implementation of the M/WBE
33 Program in Purchasing in FY 1985, a noticeable increase in M/WBE
34 participation occurred.*

35 9. *The data shows that after the M/WBE Program was*

1 implemented in the Engineering Department, aside from County and
2 federal dollars associated with the Airport Construction contracts,
3 M/WBE participation as subcontractors remained 0 until FY 1989 when
4 participation as subcontractors was 1.4% based on County records.
5 Prime contractors, not the County, hire subcontractors. However,
6 M/WBE Ordinance 88-4 required a good faith effort by primes.

7 10. The data also shows that after the M/WBE Program was
8 implemented in Engineering, M/WBE participation as prime
9 contractors peaked at 0.8% in FY 1988 and dropped to 0.1% in FY
10 1989. In the last quarter of FY 1989, the County, based on
11 instructions from the County Assistant Attorney, relaxed M/WBE
12 goals on construction contracts.

13 11. Based upon the data, Palm Beach County had a compelling
14 public interest in establishing the M/WBE Program for Black,
15 Hispanic, and women-owned construction businesses. In terms of
16 availability versus utilization, disparity can be shown for these
17 groups prior to the program. Black and women construction firms
18 were significantly under-utilized from FY 1981 to FY 1985. The
19 same is true for Hispanic construction firms except for FY 1984
20 when they were over-utilized. Asians, Native Americans and
21 unidentified minority groups were also significantly under-utilized
22 during the same period. Since the inception of the program,
23 patterns of under-utilization have continued for all M/WBES.

24 12. The County also had a compelling public interest in
25 establishing M/WBE goals in Purchasing for MBEs and WBES. Although
26 both groups had sufficient availability in all areas of Purchasing,
27 their utilization rates were generally low. Data shows a pattern
28 of under-utilization for these groups.

29 13. When examining availability versus utilization across all
30 procurement activities in both the capital and operating budgets,
31 the data clearly shows disparity for Blacks, Hispanics, and women.
32 The evidence is less conclusive for Asians and Native Americans
33 because of their relatively small numbers in the Palm Beach County
34 market area. For instance, the availability of Asian and Native
35 American construction firms is very small, with a combined

1 availability of less than 0.1% of total construction firms.

2 14. The existence of the M/WBE program has played a
3 significant role in the utilization of M/WBE firms. This is
4 particularly true given the very minimal utilization of M/WBES
5 prior to the inception of the program. However, the program's
6 direct role in regard to increasing the availability of M/WBES is
7 less significant and it is doubtful if the M/WBE program had any
8 impact on the availability of M/WBES in the market area.

9 15. Past discrimination has played a significant role with
10 regard to availability and utilization of minority businesses.

11 16. We must not ignore the potential impact of historical and
12 traditional patterns and practices on the availability of minority
13 businesses in the market area. Generous amounts of evidence of
14 past injustices may be found in recorded history and laws in almost
15 every area of the United States. For instance, until the late
16 1960s, laws which inhibited the right of blacks to a license to
17 work as a plumber, an electrician, plasterer, etc., in the various
18 trade unions were still on the books of most of the southern
19 states, including Florida. One must assume that the tightly
20 constrained access to the market area, which was profound and
21 common several decades ago, has had an impact on the number and
22 percentage of M/WBES in today's market area. One must also assume
23 that past practices have also had a significant impact on the,
24 "small, medium, and large project" progression that is critical for
25 success in almost any business, particularly in areas related to
26 construction.

27 17. There are very clear and distinct differences between the
28 perceptions of M/WBES and non-M/WBES regarding the need for the
29 program, its impact on M/WBES and non-M/WBES, and potential
30 remedies. For instance, non-M/WBE prime contractors tend to
31 question the quality of some M/WBES, and believe that M/WBES need
32 more basic skills and training to help them become more competitive
33 and realistic in their approach to business. On the other hand, a
34 majority of M/WBES point to a number of historically discriminatory
35 obstacles as the major reason for the lack of availability and

1 success of M/WBEs. They point to the fact that a majority of
2 M/WBEs do not work on private contracts. They also point to their
3 inability to obtain the financial resources necessary to do
4 business, questionable practices by prime contractors, the County,
5 and other obstacles which have hindered M/WBEs. A majority of
6 M/WBEs felt that many of the obstacles faced by M/WBEs are racially
7 and gender-based motivated, and are deeply rooted in a system that
8 has traditionally practiced exclusion of minorities and women.

9 18. Race and gender neutral alternatives have been
10 ineffective in stimulating the availability of M/WBEs and have had
11 limited impact on the utilization of M/WBEs. Race and gender
12 neutral programs currently exist in the market area, yet disparity
13 still exists for M/WBEs. The removal of race or gender-based
14 programs would not improve the results of the neutral programs.
15 Although race and gender neutral alternatives in the market area
16 are quite limited those that are available have not been able to
17 gain the confidence of M/WBEs in a manner which ensures on-going
18 use by M/WBEs.

19 WHEREAS, the Board of County Commissioners of Palm Beach
20 County, Florida adopted Resolution No. R-91-459 on April 9, 1991 in
21 which the Board of County Commissioners received, filed and
22 accepted the Revised Final Report of the Disparity Study dated
23 January 17, 1991 which summarized data comprised of documents,
24 tapes and tasks as authorized in the contract for consulting
25 services dated November 28, 1989; and

26 WHEREAS, the Board of County Commissioners of Palm Beach
27 County, Florida through Resolution No. R-91-459, adopted on April
28 9, 1991, found the following:

29 1. Market area industry practices are discriminatory towards
30 M/WBEs;

31 2. Palm Beach County has become a passive participant in
32 discrimination against M/WBEs;

33 3. There is a disparity between the number of M/WBEs
34 available to participate in County purchasing and contracting and
35 the percentage of M/WBEs who actually participate in County

1 purchasing and contracting;

2 4. Past discrimination has played a significant role with
3 regard to the availability and utilization of M/WBEs.

4 5. Race and gender neutral alternatives have been ineffective
5 in stimulating the availability of M/WBEs and have had limited
6 impact on the utilization of M/WBEs.

7 6. There is a compelling governmental interest justifying the
8 creation, implementation and enforcement of a M/WBE program; and

9 **WHEREAS**, Palm Beach County is firmly committed to the
10 principles of equal opportunity whereby all business may fully
11 participate in the contracting and procurement process of County
12 government; and

13 **WHEREAS**, it is in the best interest of the County to promote
14 the equitable utilization of minority/women business enterprises in
15 County contracting and procurement in order to eradicate the
16 lingering effects of past discrimination and to prevent the
17 County's own spending decisions from reinforcing and perpetuating
18 the exclusionary effects of past discrimination; and

19 **WHEREAS**, the requirements of this ordinance are necessary to
20 overcome the present effects of discrimination, and are designed to
21 achieve the goal of equitable utilization of Minority/Women
22 business enterprises, while at the same time maintaining a high
23 quality of goods and services provided to the County through
24 competitive bidding as required by the Palm Beach County Purchasing
25 Ordinance, Ordinance 90-25; and

26 **WHEREAS**, the Board of County Commissioners hereby establishes
27 a policy to assure that all business including minority and women
28 businesses are afforded fair and equal treatment by County
29 government in the competitive process of supplying goods and
30 services to the County.

31 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
32 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:**

33 SECTION I. SHORT TITLE.

34 This ordinance shall be known and may be cited as the "Palm
35 Beach County Minority/Women Business Enterprise Ordinance."

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SECTION III. PURPOSE.

It is the policy of Palm Beach County that all businesses be afforded an opportunity for full participation in our free enterprise system. In order to implement this policy, Palm Beach County is committed to ensuring full and equitable participation by minority/women business enterprises in the provision of goods and services to the County. The ultimate objective of this ordinance is to increase the use of minority/women business enterprises to a level comparable to the availability of minority/women business enterprises which are capable of providing goods and services to the County. Palm Beach County shall take all necessary, reasonable and legal action to prevent discrimination, to ensure that all businesses, including minority and women businesses are afforded the maximum opportunity to participate in the County's competitive purchasing process and to establish a record keeping procedure whereby the County can monitor the participation of minorities and women in its competitive purchasing process. This policy is intended to be consistent with and in furtherance of County Ordinance No. 90-25, as amended, the Palm Beach County Purchasing Ordinance, which requires award of bids and contracts to the lowest, most responsive, responsible bidder. The determination of

lowest, most responsive, responsible bidder must consider compliance with the provisions of this ordinance.

SECTION IV. DEFINITIONS.

A. "Bid" means a formal price offer by vendor to the buyer to furnish specific goods and/or services in response to an Invitation for Bids, Request for Quotation or a multi-step bidding procedure.

B. "Board" means the Board of County Commissioners of
Palm Beach County, Florida.

C. "Business" means any corporation, partnership, sole proprietorship, joint stock company, joint venture or any other private legal entity.

D. "Certification" means the process by which the Office of Equal Opportunity determines a business meets the criteria for a minority or women business enterprise.

E. "Certified minority/women business enterprise" means a business which has been certified by the County's Office of Equal Opportunity or whose certification from another agency has been accepted and approved by the County's Office of Equal Opportunity.

F. "Committee" means the M/WBE Advisory Committee.

G. "Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any real property.

H. "Contract" means (1) a deliberate verbal or written agreement between two or more competent parties to perform or not perform a specific act or acts; and (2) any type of agreement regardless of what it is called for the procurement or disposal of supplies, services or construction.

I. "Contractor" means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

J. "Controlled" for the purposes of determining whether a business is a minority or women Business Enterprise, shall mean the minority(ies), the woman or combination of minorities and women, as the context requires, shall (1) possess legal authority

1 and power to manage business assets, good will and daily operations
2 of the business; and (2) actively and continuously exercise such
3 authority and power in determining the policies and directing the
4 operations of the business.

5 K. "Days" means calendar days unless specified
6 otherwise.

7 L. "Debarment" means the exclusion for cause of a
8 vendor or contractor from bidding and/or doing business with the
9 County.

10 M. "Emergency" means an event or situation that
11 requires immediate procurement of goods and/or services, including
12 construction, to protect the health, safety and welfare of the
13 citizens of Palm Beach County.

14 N. "Front" shall mean a business which purports to be
15 a M/WBE but which is actually owned and/or controlled in a manner
16 which does not comply with the County's requirements of
17 certification.

18 O. "Goals" mean annual M/WBE goals expressed as
19 percentages of total dollar volume for participation of minorities
20 and women in the County's procurement and County's contracting for
21 professional services and construction.

22 P. "Goods" mean any tangible personal property other
23 than services or real property.

24 Q. "Joint Venture" means an association of two or more
25 persons or businesses to carry out a single business enterprise for
26 profit for which purpose they combine their property capital,
27 efforts, skills and knowledge.

28 R. "Manufacturer" means a firm or business entity who
29 produces an item from raw materials or who substantially alters the
30 form of a product in order to make it suitable for a particular
31 use.

32 S. "MBE" means minority business enterprises.

33 T. "Minority" person means an individual who is a
34 citizen or lawful permanent resident of the United States who is:

35 1. A "Black American", a person having origins in

1 any of the Black racial groups of Africa.

2 2. A "Hispanic American", a person of Spanish or
3 Portuguese culture with origins in Mexico, Central or South
4 America, or the Caribbean, regardless of race;

5 3. An "Asian American", a person having origins in
6 Asia, the Indian Subcontinent, or the Pacific Islands.

7 4. A "Native American", a person who is a member
8 of, or is eligible to be a member of, a federally recognized Indian
9 tribe. A "federally recognized Indian tribe" means an Indian
10 tribe, band, nation, rancheria, pueblo, colony, or other organized
11 group or community, including any Alaska native village, which
12 recognized by the Secretary of the Interior on October 1, 1985, as
13 having special rights and is recognized as eligible for the
14 services provided by the United States to Indians because of their
15 status as Indians, and any tribe that has a pending application for
16 federal recognition on October 1, 1985, as having special rights
17 and is recognized as eligible for the services provided by the
18 United States to Indians because of their status as Indians, and any
19 tribe that has a pending application for federal recognition on
20 October 1, 1985.

21 5. A "physically disabled person" a person who has
22 a physical impairment, defect, disease, ailment or disability of a
23 permanent nature which in any way limits the type of employment for
24 which the person would otherwise be qualified.

25 U. "M/WBE" means a minority owned business enterprise
26 or a women owned business enterprise or a combination minority and
27 women business enterprise.

28 V. "M/WBE Directory" means a compilation of certified
29 M/WBEs which is retained and published by the Office of Equal
30 Opportunity and made available to contractor(s) or vendor(s) for
31 use in identifying, subcontractors, material suppliers, etc.

32 W. "OEO" means the Palm Beach County Office of Equal
33 Opportunity.

34 X. "Owned" for the purposes of determining whether a
35 business is a minority or women business enterprise, shall mean

1 that the minorities or women, as the context requires, shall
2 possess an ownership interest of at least fifty-one percent (51%).

3 Y. "Pre-Bid or Pre-proposal conference" means a meeting
4 held prior to the date of bid or proposal submittal, which
5 disseminates to all bidders or proposers in attendance information
6 to assist them in submitting a bid or proposal including, but not
7 limited to, information regarding the M/WBE requirements of the
8 County.

9 Z. "Prime Contractor" means any person who has a
10 contract with Palm Beach County to provide specific construction
11 services, sales, supplies, materials, professional services, labor
12 and/or equipment.

13 AA. "Professional Services" mean any narrow discipline
14 wherein a known practitioner has through education and experience
15 developed expert advisory and programming skills as a vocation; any
16 service performed primarily by vocational personnel which requires
17 the analysis or certification of a professional before the services
18 are acceptable to the use of the service; or any other advisory
19 study, or programming activity where the Palm Beach County Director
20 of Purchasing determines that the level of skills and/or creativity
21 of the potential or known practitioner(s) warrant a solicitation
22 process other than the competitive bid or quotation process.

23 BB. "Project Goals" mean M/WBE goals expressed as
24 percentages of total dollar volume for participation of minorities
25 and women on individual County contracts.

26 CC. "Proposal" means an executed formal document
27 submitted by an offer to the buyer stating the goods and/or service
28 offered to satisfy the need as requested in the Request for
29 Proposal or Request for Information.

30 DD. "Procurement" means buying, purchasing, renting,
31 leasing or otherwise acquiring any goods and/or services for public
32 purposes in accordance with the law, rules, regulations and
33 procedures intended to provide for the economic expenditure of
34 public funds. For the purpose of this ordinance, procurement
35 refers to those goods and/or services, except professional

1 services, solicited by the Department of Purchasing pursuant to the
2 Purchasing ordinance, No. 90-25.

3 EE. "Quotation" means any oral or written informal offer
4 by a vendor to the buyer to furnish specific goods and/or services
5 at a stated price.

6 FF. "Request for Proposal" (RFP) means a solicitation of
7 responses for a good and/or service for which the scopes of work,
8 specifications or contractual terms and conditions cannot
9 reasonably be closely defined. Evaluation of a proposal is based
10 on prior established criteria which may include but may or may not
11 be totally limited to price.

12 GG. "Request for Quotation" means an informal request
13 either oral or written to solicit prices for specific goods and/or
14 services.

15 HH. "Responsible Bidder, Offerer, Quoter, or Respondent"
16 means an individual or business which has submitted a bid, offer,
17 proposal, quotation or response, which has the capability in all
18 respects to perform fully the contract requirements, and the
19 integrity and reliability which give reasonable assurance of good
20 faith and performance.

21 II. "Responsive Bidder, Offerer, Quoter, or Respondent"
22 means an individual or business which has submitted a bid, offer,
23 proposal, quotation or response, which conforms in all material
24 respects to the solicitation, including, but not limited to
25 compliance with any M/WBE requirements contained within the
26 solicitation.

27 JJ. "Set aside" means an arrangement in which a
28 particular contract or portion of a contract or the continuing
29 procurement of a particular class of goods and services is reserved
30 for competition solely among M/WBEs.

31 KK. "Services" mean the furnishing primarily of labor,
32 time and/or effort by a contractor, wherein the provision of goods
33 or other specific end products other than reports, studies, plans,
34 advisories, contractual documents, or other documents, relating to
35 the required performance is incidental or secondary. This term

1 shall not include construction, employment agreements or collective
2 bargaining agreements.

3 LL. "Subcontractor" means any person providing goods
4 and/or services to a prime contractor for profit, if such goods
5 and/or services are procured or used in fulfillment of the prime
6 contractor's obligations arising from a contract with Palm Beach
7 County, except persons providing goods to a prime contractor whose
8 contract with the County is for the provision of materials,
9 equipment or supplies.

10 MM. "Vendor" means an actual or potential supplier of a
11 good and/or service.

12 NN. "WBE" means women business enterprises.

13 SECTION V. SCOPE

14 This ordinance shall apply to the solicitation of all goods,
15 services and construction by the County which are governed by the
16 Palm Beach County Purchasing Ordinance 90-25, as amended. However,
17 whenever possible, the County shall utilize a solicitation process
18 which encourages M/WBE participation even on those items which are
19 exempted from the requirements of the Purchasing Ordinance. All
20 M/WBEs certified by Palm Beach County shall be eligible for the
21 benefits of the program contained within the ordinance. No later
22 than September 30, 1996, the Board of County Commissioners shall
23 consider the conversion of this M/WBE program to a program designed
24 for all disadvantaged business enterprises.

25 SECTION VI. PROGRAM ADMINISTRATION

26 The County Administrator has the overall responsibility for
27 administering the M/WBE program. The Office of Equal Opportunity
28 shall be responsible for developing, managing and implementing the
29 M/WBE program on a day-to-day basis. The County Administrator may
30 promulgate policies and procedures consistent with this ordinance
31 or any federal or state law, regulation or grant requirement. In
32 addition, for those projects which are in whole or in part funded
33 by federal grants, the County Administrator shall amend policies
34 and procedures to be consistent with amendments to the pertinent
35 federal grant regulations or laws.

1 SECTION VII. COUNTY IMPLEMENTATION

2 Palm Beach County shall take all necessary and reasonable
3 steps permissible by law to ensure that M/WBEs, particularly M/WBEs
4 whose principle place of business is located in Palm Beach County,
5 have the maximum opportunity to participate in the County's
6 purchasing processes. As a minimum, those steps shall include:

7 A. Employment of a Director of the Office of Equal
8 Opportunity and sufficient staff with the necessary authority and
9 responsibility to implement an effective M/WBE program within the
10 County.

11 B. Identification of all competitive contracting
12 opportunities with the County;

13 C. Analysis of M/WBE availability to provide the products or
14 services identified for contracting at either the prime or
15 subcontract levels;

16 D. Inclusion of M/WBEs on contract solicitation lists or
17 vendor lists.

18 E. Establishment of goals for County purchasing and
19 contracting for M/WBE participation.

20 F. Monitoring and maintenance of records sufficient for
21 verification of steps taken and results achieved to maximize M/WBE
22 participation.

23 G. Dividing purchases and contracts into smaller units,
24 areas or quantities, except in construction, where feasible and
25 likely to increase M/WBE participation without substantial adverse
26 fiscal impact to the County.

27 H. Setting delivery schedules that do not discourage M/WBE
28 participation.

29 I. Use of services and assistance provided by the Small
30 Business Administration and other agencies in locating available
31 M/WBEs and encouraging the development of such businesses.

32 J. Promotion of the County's M/WBE program both internally
33 and externally, through the use of publicity.

34 K. Maintenance of a computerized listing of certified
35 M/WBEs.

1 L. Requirement of quarterly reports by OEO to the Board of
2 County Commissioners detailing the results of efforts to obtain
3 M/WBE participation. This report shall include as a minimum the
4 percentage of M/WBE participation during the fiscal year, total
5 expenditures, and dollar amount of contracts awarded M/WBEs. If
6 the report indicates that the County is behind in reaching the
7 annual goals, the report shall also discuss the known or possible
8 reasons for the failure to meet the goals. The Board of County
9 Commissioners shall agenda as a regular agenda item each such
10 quarterly report.

11 M. Providing M/WBEs with adequate information about plans,
12 specifications and requirements of County contracts.

13 N. Where applicable, negotiating with M/WBEs in good faith
14 and demonstrating that M/WBEs were not rejected as unqualified
15 without sound reasons based on thorough investigation of their
16 capabilities;

17 O. Using the services of available community and
18 contractors' groups, local, state or federal minority and/or woman
19 business assistance offices that provide assistance in the
20 recruitment of M/WBEs for public sector contracts.

21 P. Where applicable, providing assistance to obtain bonding,
22 lines of credit and insurance;

23 Q. Scheduling pre-bid or pre-proposal meetings where
24 appropriate to inform potential contractors of M/WBE requirements
25 and other bid/proposal requirements, and encouraging M/WBEs to
26 attend the pre-bid or pre-proposal meetings.

27 R. Offer instructions and clarification on bid/proposal
28 specifications, procurement policy, procedures and general bidding
29 requirements.

30 S. Maintain a file of successful bid/proposal documents from
31 past procurement and permit M/WBEs to review and evaluate such
32 documents.

33 T. When requested or at the discretion of the County,
34 conduct debriefing sessions on awarded contracts to explain why
35 bids/proposals may have been unsuccessful.

1 U. Provide detailed instructions on job performance
2 requirements.

3 V. Provide information and assistance on continued
4 certification procedures, subcontracting practices and bonding
5 requirements.

6 W. Provide sensitivity training to County employees on M/WBE
7 issues.

8 X. Evaluate County employees partially upon their ability to
9 achieve M/WBE participation goals.

10 Y. Ensure that bid/proposals specifications and plans are
11 not written or drawn so as not to prejudice or unreasonably limit
12 M/WBE participation. The inclusion of proprietary specifications
13 should be avoided without the establishment of a particular need.

14 Z. Limit the use of multi-year contracts and renewal
15 provisions in contracts so as not to inhibit M/WBE participation.

16 AA. Continue to investigate race/gender neutral alternatives
17 to lessen barriers to participation by any small business wishing
18 to do business with the County.

19 BB. Placement of bid notices in the Dodge report; M/WBE trade
20 association newsletters, major local or regional newspaper and
21 minority and women focused media.

22 CC. Plan and participate in training seminars for the purpose
23 of informing potential bidders/proposers/vendors of M/WBE program
24 and the business opportunities available.

25 DD. Serve as liaison with economic development organizations
26 and agencies working in support of economic development in the
27 minority community.

28 EE. Arrange adequate time for the submission of
29 bids/proposals so as to facilitate the participation of M/WBEs.

30 FF. Creation and dissemination of a M/WBE Enterprise
31 Directory to contractors for use in identifying subcontractors and
32 material suppliers.

33 GG. Require entities who receive in excess of 51% of their
34 funding from the Board of County Commissioners of Palm Beach County
35 to establish a program to encourage M/WBE participation.

1 SECTION VIII. WAIVER

2 A. Pre-award Waiver: At any time prior to the award of a
3 contract or a purchase of goods and supplies, the County
4 Administrator may grant a partial or complete waiver of M/WBE
5 requirements in the event of an emergency when a waiver is
6 necessary to avoid detriment to the public health, safety or
7 welfare of the citizens of Palm Beach County. If the County
8 Administrator grants such a waiver, he/she must document the reason
9 for granting the waiver and notify the Board of County Commissioner
10 at the next available board meeting.

11 B. Post Bid Award Waiver: A waiver may be granted if the
12 apparent successful bidder/proposer has demonstrated that it has
13 exercised good faith efforts in soliciting M/WBE participation but,
14 has been unable to achieve the established project goal and a
15 determination has been made that the award to the apparent
16 successful bidder/proposer is in the best interests of the County.

17 SECTION IX. GOALS

18 A. County Annual Goals: Annual goals for Palm Beach County
19 are set based upon the 1991 availability analysis conducted by MGT
20 of America, Inc. From the date of enactment of this ordinance
21 through December 31, 1992, the goal will be 150% of actual
22 availability, except that the goal for Hispanics in professional
23 services shall be 125% of actual availability. The goals are
24 adopted to increase M/WBE participation in consideration of the
25 effects of past discrimination on the creation of new M/WBEs and
26 are intended to be remedial in nature. The failure of the County
27 to meet the annual dollar utilization goals shall not constitute
28 grounds for a lawsuit against the County, provided the County made
29 affirmative efforts to meet those goals.

30 1. Annual Construction Goals

31 The annual goal in construction is 11.1% which
32 includes an annual goal for women business enterprises of 2.1%, an
33 annual goal of black business enterprises of 3.9% and an annual
34 goal of 2.25% for Hispanic business enterprises. The remaining
35 2.85% of the total annual goal in construction can be met through

1 the use of any M/WBE certified by Palm Beach County.

2 2. Annual Professional Services Goals

3 In professional services the annual goal is 9.95%
4 which includes an annual goal for women business enterprises of
5 4.05%; an annual goal for black business enterprises of 1.8%; and
6 an annual goal for Hispanic business enterprises of 2.45%. The
7 remaining 1.65% of the total annual goal in professional services
8 can be met through the use of any M/WBE certified Palm Beach
9 County.

10 3. Annual Procurement Goal

11 In procurement the annual goal is 5.35% which
12 includes an annual goal for women business enterprises of 2.03%, an
13 annual goal for black business enterprises of 1.07% and an annual
14 goal for Hispanic business enterprises of 1.29%. The remaining
15 .96% of the total annual goal in procurement could be met through
16 the use of any M/WBE certified by Palm Beach County.

17 4. Future Annual Goals

18 The County will increase the annual goals to 200% of
19 actual availability, (except the goal for women in professional
20 services will be 150% of actual availability and the goal for
21 Hispanics in professional services will be 125% of actual
22 availability) effective January 1, 1993. At 200% of actual
23 availability the annual goal in construction will be 14.80% which
24 includes an annual goal for women business enterprises of 2.80%, an
25 annual goal for black business enterprises of 5.20% and an annual
26 goal for Hispanic business enterprises of 3.0%. The remaining 3.8%
27 of the total annual goal in construction could be met through the
28 use of any M/WBE certified by Palm Beach County. The annual goal
29 for professional services will be 11.1% which includes an annual
30 goal for women business enterprises of 4.05%, an annual goal for
31 black business enterprises of 2.40% and an annual goals for
32 Hispanic business enterprises of 2.45%. The remaining 2.20% of the
33 total annual goal for professional services could be met through
34 the use of any M/WBE certified by Palm Beach County. The annual
35 goal for procurement will be 7.12% which includes an annual goal

1 for women business enterprises of 2.70%, an annual goal for black
2 business enterprises of 1.42% and an annual goal for Hispanic
3 business enterprises of 1.72%. The remaining 1.28% of the annual
4 goal for procurement could be met through the use of any M/WBE
5 certified by Palm Beach County .

6 B. Annual Contract Forecast Report

7 Each department shall annually formulate a contract
8 forecast estimating the number, probable monetary value, type of
9 contracts, the estimated solicitation date for the contracts the
10 department expects to award or purchases the department expects to
11 make and any special circumstance relating to the contracts. Such
12 reports shall be forwarded to the Department who will be
13 responsible for soliciting the goods, services or contracts. The
14 Departments responsible for soliciting the goods, services or
15 contracts shall compile all reports received from the individual
16 departments and submit these reports to the County Administrator
17 with copies to the OEO before the beginning of each fiscal year.
18 These reports shall be submitted to the Goal Setting Committee for
19 their use and consideration in establishing project goals.

20 C. Project or Contract Goals:

21 Specific goals for each project or contract shall be
22 adopted on a project by project or contract by contract basis.

23 1. Goal Setting Committee

24 The goals will be established by a Goal Setting Committee
25 composed of the following: (a) Assistant County Attorney for Office
26 of Equal Opportunity or another representative of the County
27 Attorney's Office, (b) representative of Administration, (c)
28 representative of OEO, (d) representative of Office of Financial
29 Management and Budget, and (e) a representative of the Department
30 responsible for letting the contract.

31 2. Criteria for Project or Contract Goal Establishment

32 In setting project or contract goals, the following
33 factors shall be considered: (a) the type of work required by the
34 contract to be let; (b) the subcontracting opportunities for M/WBEs
35 and local M/WBEs, including normal overhead and support ancillary

1 services to be let and the number of certified M/WBEs available;
2 (c) all past and current experience of the County in meeting its
3 goals and the results and reasons therefore, and (d) special
4 circumstances relating to the project, including, but not limited
5 to scheduling constraints, constructability requirements and
6 federal grant goal requirements.

7 3. Procedure for Project or Contract Goal
8 Establishment

9 The department responsible for letting the contract
10 will break down the project and identify the various components of
11 the project. A report will be submitted to the Office of Equal
12 Opportunity (OEO) and the Goal Setting Committee outlining the
13 potential subcontracting opportunities in the project or contract
14 and the estimated percentage that each subcontract component bears
15 to the total project or contract. The report shall include the
16 scope of the anticipated work for each component to be
17 subcontracted and the qualifications required of the subcontractor
18 to do the work. The report shall also identify if the project or
19 contract has any other specific requirements such as may be imposed
20 by a federal grant. When the OEO receives the report, the OEO will
21 schedule a time for convening the Goal Setting Committee.

22 The OEO will review the certified list of M/WBEs and determine
23 the availability of M/WBE certified subcontractors qualified to do
24 the work in each possible subcontract component. The OEO shall
25 submit a report to the Goal Setting Committee on the availability
26 of M/WBE subcontractors certified to do the work for each component
27 of the project or contract.

28 The Goal Setting Committee shall set the project or contract
29 goals based upon the availability of certified M/WBEs for
30 participation in accordance with the County's annual goals as set
31 forth in Section IX A of this ordinance or pursuant to any federal
32 regulations applicable to the project or contract.

33 The established goal shall be applied to the full monetary
34 value of the contract and be reflected in the full monetary portion
35 spent on subcontracts for supplies, consulting, or construction

1 services to be awarded to those M/WBEs meeting contract
2 specifications.

3 In case of a certified M/WBE submitting a bid as a prime
4 contractor, the M/WBE will be credited with meeting the percentage
5 of the project or contract goal that the M/WBE will be performing
6 with its own forces plus the percentage of subcontracts awarded to
7 certified M/WBEs.

8 A joint venture consisting of a M/WBE and non-minority
9 businesses, functioning as a prime contractor, will be credited
10 with M/WBE participation on the basis of percentage of
11 participation in the work, risk and profit by the M/WBE.

12 Bidders will receive credit for M/WBE subcontracts for goal
13 attainment only for subcontractors who are certified and licensed,
14 if required, in the specific area of expertise for which credit is
15 sought at the time of bid opening.

16 4. Project or Contract Goals for Projects or Contracts
17 of \$50,000 or less

18 Project or contract goals will not be established
19 for contracts under \$50,000 unless otherwise provided herein.
20 However, M/WBE participation shall be strongly encouraged on all
21 such projects or purchases.

22 The project manager will submit reports to the OEO
23 on all construction contracts of \$50,000 or less. The report will
24 include the project name, project number, project description,
25 advertisement date and estimated dollar value.

26 SECTION X. GOOD FAITH EFFORTS

27 Contractors submitting bids or proposals to provide goods or
28 services to the County shall attempt to comply with M/WBE
29 participation goals as established by this program. In the event
30 the goals are not achieved, the contractor must include with its
31 bid evidence of good faith efforts to achieve the goals. A bidder
32 or proposer may still be awarded a contract subject to the
33 provisions of Section XII of this ordinance.

34 The County shall consider the following criteria in
35 determining good faith efforts:

1 A. Attendance at the pre-bid conference, if held.

2 B. Whether and when the contractor provided written notice
3 to all certified M/WBEs listed in the Palm Beach County M/WBE
4 Directory that perform the type of work to be subcontracted and
5 advising the M/WBEs:

6 1. of the specific work the contractor intends to
7 subcontract

8 2. that their interest in the contract is being
9 solicited; and

10 3. how to obtain information for the review and
11 inspection of contract plans and specifications.

12 C. Whether the contractor selected feasible portions of work
13 to be performed by M/WBEs, including, where appropriate, breaking
14 contracts or combining elements of work into feasible units. The
15 ability of the contractor to perform the work with its own work
16 force will not in itself excuse a contractor from making positive
17 efforts to meet contract goals.

18 D. Whether the contractor considered all quotations received
19 from M/WBEs and for those quotations not accepted, the contractor
20 shall provide an explanation of why the M/WBE will not be used
21 during the course of the contract. Receipt of a lower quotation
22 from a non-M/WBE will not in itself excuse a contractor's failure
23 to meet project goals.

24 E. Whether the contractor provided interested M/WBEs
25 assistance in reviewing the contract plans and specifications;

26 F. Whether the contractor assisted interested M/WBE firms in
27 obtaining required bonding, lines of credit or insurance if such
28 assistance was necessary;

29 G. Whether the contractor advertised in general circulation,
30 trade association, and/or minority/women - focus media concerning
31 the subcontracting opportunities.

32 H. Whether the contractor followed up initial solicitations
33 of interest by contacting M/WBE to determine with certainty whether
34 the M/WBE was interested.

35 I. Whether the contractor negotiated in good faith with

1 interested M/WBEs, not rejecting M/WBEs as unqualified without
2 sound reasons based on a thorough investigation of their
3 capabilities;

4 J. Whether the contractor effectively used the services of
5 available minority/women community organizations; minority/women
6 contractors' groups; local, state and federal minority/women
7 business assistance offices; and other organizations that provide
8 assistance in the recruitment and placement of minority/women
9 business enterprises.

10 K. Whether the contractor has utilized M/WBE subcontractors
11 on other County contracts within the past six months.

12 L. Whether the contractor's efforts were merely pro forma,
13 and given all relevant circumstances, could not reasonably be
14 expected to provide sufficient M/WBE participation to meet the
15 goals;

16 This list is not intended to be exclusive or exhaustive and
17 the County will look not only at the different kinds of efforts the
18 contractor has made, but also the quality, quantity, intensity and
19 timeliness of those efforts. The Office of Equal Opportunity shall
20 develop policies and procedures and clarifications which provide
21 objective guidelines pertaining to the criteria for determination
22 of good faith efforts which shall be approved by the Board of
23 County Commissioners.

24 It is the responsibility of the contractor to exercise good
25 faith efforts. Any act or omission by the County shall not relieve
26 the contractor of this responsibility.

27 SECTION XI. CONTRACT AWARD REVIEW

28 Bidders or proposers shall provide the County with all
29 documents regarding M/WBE participation and good faith efforts
30 required in the bid documents or requests for proposals. The
31 documents shall include a list of all M/WBE subcontractors who will
32 be used on the contract. If a contractor lists a M/WBE which has
33 not been certified by the County or a M/WBE who has been
34 decertified prior to the award of the contract, the County shall
35 require the contractor, within a specific reasonable time frame as

1 contained in the Policies and Procedures, to attain the M/WBE goal
2 within certified M/WBEs or make a showing of good faith efforts
3 exercised in an attempt to do so.

4 The Department responsible for letting the contract shall
5 forward the bid/proposal documents relative to M/WBE participation
6 of all bidders/proposers to the OEO within three (3) days of
7 opening of the bids/proposals.

8 The Office of Equal Opportunity shall provide its evaluation
9 of bids to the Department responsible for letting the contract
10 within fifteen (15) days of receipt of the bids by OEO.

11 SECTION XII. CONTRACT DOCUMENTS

12 The following provisions shall be included in the body of the
13 contract document in any contracts with Palm Beach County for the
14 provision of goods and services:

15 A. A provision indicating that this ordinance is
16 incorporated by reference and failure to comply with any of the
17 requirements by a contractor will be considered a breach of
18 contract.

19 B. A requirement that during the term of the contract the
20 contractor shall comply with, as to tasks and proportionate dollars
21 amounts throughout the term of the contract, all plans made in
22 their proposal or bid for the use of M/WBEs. M/WBEs which for any
23 reason no longer remain associated with the contract of the
24 contractor shall be replaced with other certified M/WBEs unless
25 approval to the contrary is granted by the County.

26 C. A provision prohibiting any agreements between a
27 contractor and a M/WBE in which the M/WBE promises not to provide
28 subcontracting quotations to other bidders or potential bidders.

29 D. The requirement of maintenance of relevant records, and
30 information necessary to document compliance with this ordinance
31 and shall include the right of the County to inspect such records.

32 SECTION XIII. CONTRACT COMPLIANCE REQUIREMENTS

33 The Office of Equal Opportunity will establish procedures for
34 monitoring and evaluating program performance and compliance,
35 subject to the County Administrators approval. Failure to comply

1 with the M/WBE requirements of an awarded contract may result in
2 suspension or debarment of the firms or individuals involved.
3 Debarment of bidders by Palm Beach County for activity contrary to
4 this program will be carried out according to the debarment
5 procedures contained in the Palm Beach County Purchasing Ordinance
6 No. 90-25. Any such firm or individual will be notified by
7 registered mail of said suspension or debarment and may appeal the
8 suspension or debarment through the procedures set forth in Palm
9 Beach County Purchasing Ordinance 90-25.

10 The Board of County Commissioners reserves the right to reject
11 any proposal deemed non-responsive for failing to meet the M/WBE
12 requirements.

13 SECTION XIV. RANKING OF RESPONSIVE BIDDERS

14 When evaluating competitive bids/quotes for award in which the
15 apparent low bidder is determined to be non-responsive to M/WBE
16 requirements, the bid shall be awarded to the low bidder responsive
17 to M/WBE requirements as long as the bid does not exceed the low
18 bid amount by the following percent:

19 10% of the lowest Bid/Quote between	\$-0--	\$19,999
20 9% of the lowest Bid/Quote between	\$20,000 -	\$39,999
21 8% of the lowest Bid/Quote between	\$40,000 -	\$59,999
22 7% of the lowest Bid/Quote between	\$60,000 -	\$79,999
23 6% of the lowest Bid/Quote between	\$80,000 -	\$99,999
24 5% of the lowest Bid/Quote between	\$100,000 -	\$2,000,000

25 In cases where the lowest non-responsive bid exceeds
26 \$2,000,000, the contract shall be awarded to the bidder responsive
27 to M/WBE requirements provided that bid does not exceed by \$100,000
28 the lowest non-responsive bid. This section applies only when
29 price is the determining factor.

30 SECTION XV. DISQUALIFICATION/REJECTION

31 The Board of County Commissioners reserves the right to reject
32 any proposals from bidders who have previously failed to perform
33 properly and who have done so by commission or omission of an act
34 of such serious and compelling nature that the act indicates a
35 serious lack of business integrity or honesty. Such acts include,
36 but are not limited to:

37 A. The violation of any applicable law, regulation, or
38 contract provision relating to the performance of obligations

1 incurred pursuant to an agreement with a recipient under a County
2 contract;

3 B. Making or procuring to make, any false statement or using
4 deceit for the purpose of influencing in any way any action of the
5 County;

6 C. Making false representations as an M/WBE for purposes of
7 qualifying for certification as such an enterprise under a program
8 that is designed to assisted M/WBEs in the receipt of contracts
9 with the County for the provision of goods or services;

10 D. Misrepresentations and misconduct apply to fraud, deceit,
11 or other actions indicating serious lack of business integrity or
12 honesty with respect to the eligibility of firms to participate as
13 M/WBEs, acts as or knowingly makes use of "front" company (i.e., a
14 firm which is not in fact owned and controlled by minority
15 individuals or women, but poses as such in order to participate as
16 a M/WBE in the County's program.)

17 It is unlawful for any individual to falsely represent any
18 entity as a minority/women business enterprise for purposes of
19 qualifying for certification as such an enterprise under this
20 ordinance. Any person who violates this section is guilty of a
21 felony of the second degree, punishable as provided in Florida
22 Statutes 775.082 - 775.084.

23 Any contractor or firm which falsely represents to the County,
24 pursuant to a County contract, that it is a M/WBE firm, or which
25 represents that it will use the services or commodities of M/WBE
26 firm and subsequently does not do so, without prior County
27 approval, may be in breach of contract. Upon determination that a
28 breach of contract has occurred, the County shall have all
29 available remedies for breach of contract. In addition, all
30 amounts paid to the contractor or firm under the contract intended
31 for expenditure with M/WBEs will be forfeited and recoverable by
32 the County. The County, at its sole discretion, may waive the
33 breach and available remedies; however, waiver of rights under this
34 provision does not constitute a waiver of rights for breach of any
35 other provision of the contract.

1 SECTION XVI. PROMPT PAYMENT POLICY

2 Every contract let by the County for the performance of work
3 shall contain a provision requiring the prime contractor to certify
4 in writing that all subcontractors, subconsultants and suppliers
5 have been paid for work and materials from previous progress
6 payments received, less any retainage, by the prime contractor
7 prior to receipt of any further progress payments. During the
8 contract and upon completion of the contract the County may request
9 documentation to certify payment to subcontractors, subconsultants
10 or suppliers. This provision in no way creates any contractual
11 relationship between any subcontractor, subconsultant or supplier
12 and the County or any liability on the County for the contractor's
13 failure to make timely payment to the subcontractor, subconsultant
14 or supplier.

15 SECTION XVII. PROCUREMENT

16 The Department of Purchasing shall establish specific
17 purchasing procedures to increase M/WBE participation, particularly
18 for purchases under \$10,000. Those measures shall include a
19 provision that every effort will be made by buyers to contact all
20 registered certified M/WBEs within a particular commodity area for
21 purchases under \$10,000. The purchasing procedures shall also
22 include a provision requiring awards of purchases under \$10,000 to
23 be made to the lowest responsive bidder unless a certified M/WBE is
24 within 10% of the lowest non-M/WBE bid, then the award shall be
25 made to the certified M/WBE bidder submitting the lowest bid.

26 For purchases of goods over \$10,000, goals will be established
27 at the same percentage as the annual procurement goals set forth in
28 Section IX(A)(3). The goals will be increased effective January 1,
29 1993 pursuant to Section IX(A)(4). If the Purchasing Department or
30 the Office of Equal Opportunity determines that the annual goals
31 are too low or too high for a particular purchase, then the Goal
32 Setting Committee shall establish the goals pursuant to Section
33 IX(c). All procurement of services over \$10,000 solicited by or
34 through the Purchasing Department shall have goals established
35 pursuant to Section IX(c).

1 SECTION XVIII. PROFESSIONAL SERVICES

2 The County will provide contracting opportunities for
3 professional services pursuant to Section 287.055, Florida Statutes
4 as amended, known as the "Consultant's Competitive Negotiation
5 Act"; which requires that one element of consideration is M/WBE
6 participation. The County will also impose M/WBE requirements on
7 the solicitation of all other professional services not covered by
8 the Consultant's Competitive Negotiation Act. A summary of M/WBE
9 program procedures will be included in each solicitation. A point
10 system will be utilized to determine the recipient of the contract
11 award.

12 Businesses submitting proposals to provide professional
13 services to the County will be eligible to receive points, not to
14 exceed 10% of the total number of possible points awarded, for
15 M/WBE participation.

16 It will be the responsibility of the firm submitting a
17 proposal to furnish all the necessary information to the County in
18 order to receive points for M/WBE participation. The firm may
19 choose only one level of participation. Points will not be
20 cumulative. Points shall be assigned in descending order based on
21 the level of M/WBE participation as outlined below:

- 22 A. The applicant firm is a certified M/WBE;
- 23 B. The applicant firm has submitted a statement certifying
24 that a minimum of 10% [or the established goal for the
25 project, whichever is higher] of its ultimate fee will be
26 subcontracted to a M/WBE, and has identified in its
27 proposal the M/WBE it intends to utilize.
- 28 C. The applicant has submitted a statement certifying that
29 a minimum of 10% [or the established goal for the
30 project, whichever is higher] of the ultimate contract
31 price will go for goods or services supplied by a
32 certified M/WBE and identified in the statement those
33 M/WBEs intended to be utilized and what percentage of the
34 contract price is estimated for each.
- 35 D. The applicant has submitted a statement certifying that

1 one or more professionals in the work force to be
2 utilized on the project is a minority and/or female and
3 has identified those individuals and their respective
4 duties.

5 The provisions within this section pertaining to professional
6 services are not intended to be used to the exclusion of other
7 provisions of this ordinance in the procurement of professional
8 services.

9 SECTION XIX. BID PREFERENCE SYSTEM

10 A bid preference system is hereby established. This bid
11 preference system may be utilized by a County Department when a
12 review of the participation reports indicates that the Department
13 may not achieve its annual goal.

14 Award will be made to the bidder who includes the highest
15 M/WBE utilization as long as that bid does not exceed the low bid
16 by the following percentage:

17 10% of the lowest Bid/Quote between	\$-0--	\$19,999
18 9% of the lowest Bid/Quote between	\$20,000 -	\$39,999
19 8% of the lowest Bid/Quote between	\$40,000 -	\$59,999
20 7% of the lowest Bid/Quote between	\$60,000 -	\$79,999
21 6% of the lowest Bid/Quote between	\$80,000 -	\$99,999
22 5% of the lowest Bid/Quote between	\$100,000 -	\$200,000

23 SECTION XX. SET ASIDES

24 By December 31, 1992, the County will evaluate its progress in
25 reaching its goals as stated in Section IX of this ordinance. If
26 the goals have not been met, the Board of County Commissioners will
27 examine the reasons why goals were not achieved and consider a
28 mandatory program such as set asides at the first regular meeting
29 of the Board of County Commissioners in January 1993.

30 SECTION XXI. CERTIFICATION

31 A. Eligibility Standards

32 An eligible MBE or WBE is a business concern which is both
33 owned and controlled by minorities or by women. This means that
34 minorities or women must own at least fifty-one (51%) of the
35 business and that the management and daily business operations are
36 controlled by the minorities or women who own it.

37 An eligible M/WBE for this program shall be an independent
38 business. The ownership and control by minorities and/or women

1 shall be real, substantial and continuing, and shall continue
2 beyond the pro forma ownership of the firm as reflected in its
3 ownership documents. The minority or women owners shall enjoy the
4 customary incident of ownership and shall share in the risks and
5 profits commensurate with their ownership interests, as
6 demonstrated by an examination of the substance rather than form or
7 arrangements. Recognition of the business as a separate legal
8 entity for tax or corporate purposes is not necessarily sufficient
9 for recognition as an M/WBE. In determining whether a potential
10 M/WBE is an independent business, the County shall consider all
11 relevant factors, including, but not limited to, the date the
12 business was established, the adequacy of its resources for the
13 type of work specified, and the degree to which financial,
14 equipment leasing and other relationships with non-minority firms
15 vary from established industry practices.

16 1. Ownership

17 In determining ownership of the business, the
18 contribution of capital or expertise by the minority or women
19 owners to acquire their interest in the firm shall be real and
20 substantial. Examples of insufficient contributions include, but
21 are not limited to, a promise to contribute capital, a note payable
22 to the firm or its owners who are not minorities or women, or the
23 mere participation as an employee, rather than as a manager/owner.

24 Businesses which have had a transfer of ownership or
25 control from a non-minority or women, who maintains any interest in
26 the business, to a minority or woman shall not be considered for
27 certification for one (1) year of such transfer.

28 2. Control

29 The minority or woman owner(s) must have operational
30 and managerial control of the business.

31 The primary consideration determining operational
32 control and the extent to which the minority person or woman
33 actually operates the business will rest upon the peculiarities of
34 the industry of which the business is a part. Accordingly, in
35 order to clarify the level of operational involvement of the

1 minority person or woman in the business to be deemed as an M/WBE,
2 the following examples are put forth and are not to be all
3 inclusive:

4 a. The minority person or woman should have some
5 experience in the industry for which certification is sought.

6 b. The minority person or woman should be able to
7 demonstrate that basic decisions pertaining to the daily operation
8 of the business are independently made.

9 c. The minority person or woman should have some
10 technical competence in the industry for which certification is
11 sought. The minority person or woman should have a working
12 knowledge of the technical requirements of the business needed to
13 operate in the industry.

14 Managerial control means that the minority or woman has the
15 demonstrable ability to make independent and unilateral business
16 decisions needed to guide the future and destiny of the business.
17 For a minority or woman to demonstrate the extent of his/her
18 control, the following examples are put forth and are not intended
19 to be all inclusive:

20 a. Corporate by-laws or Partnership Agreements or
21 other agreements should be free of restrictive language which
22 dilutes the minority's or woman's control, thus preventing him/her
23 from making those decisions which affect the destiny of the
24 business.

25 b. The minority person or woman should be able to
26 clearly show, through production of documents, the areas of control
27 such as, but not limited to:

28 i) authority and responsibility to sign
29 payroll checks and letters of credit.

30 ii) authority for negotiations and signature
31 responsibility for insurance and/or bonds.

32 iii) authority for negotiations and/or
33 signature services.

34 If the owners of the firm who are not minorities or women are
35 disproportionately responsible for the operation of the firm, then

1 the firm is not to be considered an M/WBE within the meaning of
2 this program. Where the actual management of the firm is
3 contracted out to individuals other than the owner, those persons
4 will be considered as controlling the business.

5 B. Application Procedures

6 All applicants wishing to be considered as certified
7 businesses for the benefits of this program must apply for M/WBE
8 certification by completing a M/WBE Disclosure Affidavit which can
9 be obtained through the Office of Equal Opportunity. The Office of
10 Equal Opportunity will prepare a certification guidebook which will
11 be distributed to interested M/WBEs and which will provide
12 guidelines to the preparation of a M/WBE certification application.
13 Applicants must submit the following documentation, as appropriate
14 to their business:

15 1. Corporations:

16 a. list of corporation's current full-time and
17 part-time employees by length of service;

18 b. proof of minority/woman status, e.g. copy of
19 birth certificate, drivers license or other records;

20 c. articles of incorporation, including date
21 approved by State, and any subsequent amendments;

22 d. by-laws;

23 e. prior two (2) year's financial statement
24 prepared by an independent CPA or accountant;

25 f. prior two (2) year's federal corporate tax
26 returns including all schedules;

27 g. resumes of principals and management personnel
28 of business showing education, training and employment with dates;

29 h. stock transfer agreement(s);

30 i. license to do business in Palm Beach County and
31 any other necessary licenses;

32 j. minutes of first corporate organizational
33 meeting;

34 k. copies of last three (3) months corporate
35 payroll;

- 1 l. stock ledger;
- 2 m. copies of the corporations distribution of
- 3 profits for the previous year;
- 4 n. copies of third party agreements such as rental
- 5 and lease agreements, management agreements, or purchase
- 6 agreements;
- 7 o. copies of stock certificates issued;
- 8 p. proof of stock purchase.

9 2. Partnerships:

- 10 a. list of partnership's current full-time and
- 11 part-time employees by length of service;
- 12 b. proof of minority/women status, e.g. copy of
- 13 birth certificate, drivers license or other documentation;
- 14 c. partnership agreement;
- 15 d. prior two (2) years financial statements
- 16 prepared by an independent CPA or accountant;
- 17 e. prior two (2) year's federal tax returns
- 18 including all schedules;
- 19 f. resumes of all partners and management
- 20 personnel showing education, training and employment with dates;
- 21 g. license to do business in Palm Beach County and
- 22 any other necessary licenses';
- 23 h. buy out rights agreement;
- 24 i. profit sharing agreement;
- 25 j. copies of last three (3) months partnership
- 26 payroll;
- 27 k. proof of capital invested;
- 28 l. copies of the partnership's distribution of
- 29 profits for the previous year;
- 30 m. copies of third party agreements such as rental
- 31 and lease agreements, management agreements or purchase agreements.

32 3. Sole Proprietors:

- 33 a. license to do business in Palm Beach County and
- 34 any other necessary licenses;
- 35 b. verification to do business under an assumed

name;

c. owner and management personnel resumes;

d. prior two (2) years Federal tax returns

including all schedules;

e. list of current full-time and part-time employees by length of service;

f. proof of minority/women status, e.g. copies of birth certificate, drivers license or other documentation.

C. Application Review Procedures

Once an applicant has submitted the application and all supporting documentation, certification review will be completed within sixty (60) days and the following procedures will apply:

1. The M/WBE certification application and all supporting documents will be logged in as appropriate. Applications will not be processed until all documents are received. The OEO will inform the applicant of any missing documentation. Any applicant failing to submit the documentation within 30 days of the notice, shall be deemed to have abandoned its application. A list of required documentation will be provided with the application. Documents not in English shall be accompanied by a certified translation.

2. The application will be reviewed for completeness and accuracy. References will be called and information verified by third parties, when appropriate.

3. When deemed appropriate by the OEO, a personal interview (site visit) will be scheduled with the principal(s) to discuss the documentation submitted and determine if the M/WBE applicant meets the established criteria.

4. Applicants approved for certification will be notified immediately by mail. Certified M/WBEs shall be listed in the Palm Beach County M/WBE directory.

D. Denial of Certification

Applicants denied certification shall be notified by certified mail, and informed of their right to appeal the denial. An applicant denied certification may not reapply for certification,

1 for one year from the denial of the certification.

2 E. Appeal of Certification Denial

3 Any firm that believes it has been wrongly denied
4 certification as a M/WBE may file an appeal in writing, signed and
5 dated, with the OEO. The appeal shall be filed no later than 15
6 days from the date of receipt of notice of denial of certification.
7 The OEO may extend the time for filing or waive the time limit in
8 the interest of justice, specifying in writing the reason for so
9 doing.

10 F. Hearing on Appeal of Certification Denial.

11 If an appeal is filed, an administrative hearing will be
12 conducted with the Director of the Office of Equal Opportunity
13 acting as the hearing officer. The hearing will be scheduled
14 within 30 days of the filing of the request for appeal. The
15 Director of the Office of Equal Opportunity may grant a written
16 request for extension of this hearing by an applicant if in the
17 interest of justice.

18 At the hearing, the Director may not consider any new
19 information which was not available at the time of the application.
20 This hearing is the final step available in the Palm Beach County
21 administrative process for the denial of a certification
22 application.

23 The Director of the Office of Equal Opportunity will provide
24 written notice as to the outcome of the hearing within ten (10)
25 days of the date of the hearing.

26 G. Reciprocal Certification

27 Only firms certified by Palm Beach County or by any other
28 political subdivision or governmental entity and granted reciprocal
29 certification by Palm Beach County will be used in determining goal
30 attainment. Reciprocity shall be granted to M/WBE firms which have
31 been certified by other jurisdictions which meet the certification
32 standards of Palm Beach County.

33 Eligibility for reciprocal certification shall be contingent
34 upon a determination by the OEO that the standards of the
35 certifying jurisdiction meet the certification standards of Palm

1 Beach County. The M/WBE seeking reciprocal certification must
2 submit to OEO a copy of the current certification from the
3 certifying jurisdiction and a copy of the completed application
4 submitted to the certifying jurisdiction along with any affidavits
5 of continued eligibility.

6 H. Recertification

7 Certified M/WBEs are required to submit an affidavit of
8 their continued eligibility as an M/WBE annually. The OEO may
9 conduct site visits or review documents to insure continued
10 compliance as an M/WBE. If there has been a change in ownership
11 interest and/or control, the M/WBE must notify the OEO within
12 thirty (30) days of the change. Supporting documentation may be
13 required for continued certification. A company that fails to
14 submit its affidavit of continued eligibility or fails to submit
15 documentation requested by the OEO will be decertified.

16 The criteria for recertification shall be the same as for
17 decertification. A applicant may request an appeal of denial of
18 recertification within ten (10) days of receipt of notice of
19 denial. The hearing shall be conducted in the manner described in
20 Section XXI F above and notice of the outcome of the hearing shall
21 be sent within ten (10) days of the hearing. This hearing shall be
22 the final step in the administrative review of denial of
23 recertification.

24 An applicant denied recertification may not reapply for
25 certification for one (1) year from the denial of the
26 recertification.

27 I. Decertification

28 If during the period of certification, the County
29 receives written information that the M/WBE received certification
30 improperly or that there has been such a substantial change in
31 circumstances in the operation, ownership, control or activities of
32 the M/WBE that continued certification would be contrary to the
33 Palm Beach County M/WBE policy, then the OEO shall conduct an
34 investigation of the allegations.

35 The OEO shall decertify the M/WBE if the investigation

1 indicates that:

2 1. The M/WBE cannot be contacted at the last known
3 address;

4 2. The M/WBE is no longer in business;

5 3. The M/WBE is no longer licensed to do the type of
6 business for which it was certified;

7 4. The M/WBE obtained its original certification and/or
8 recertification through false representation or deceit; or

9 5. The M/WBE has experienced such a substantial change
10 in ownership or control that continued certification would be
11 contrary to the policy of the Palm Beach County M/WBE program.

12 The Director of OEO shall notify the M/WBE by certified
13 mail that decertification is recommended. The M/WBE may request an
14 appeal hearing of the decertification within (10) days of receipt
15 of the notice. The hearing shall be conducted in the manner
16 described in Section XXI F above and notice of the outcome of the
17 hearing will be sent within (10) days of the hearing. This hearing
18 shall be the final step in the administrative review of a
19 decertification.

20 **SECTION XXII. GRADUATION FROM M/WBE PROGRAM**

21 All businesses certified as M/WBE may participate in the
22 programs contained within this ordinance for a period of one year
23 from their certification or one year from the date of enactment of
24 this ordinance, whichever is later. Continued participation will
25 be dependent upon the M/WBEs need for the preferences extended to
26 M/WBEs under this Ordinance. The M/WBE shall not be eligible for
27 continued participation in the preference programs contained in
28 Sections XVII and XIX of this ordinance if the business has
29 average/annual gross sales in commodities and/or service labor and
30 materials in excess of \$1,000,000.00 over the past three years or
31 has average annual gross sales in construction in excess of
32 \$5,000,000.00 over the past three years.

33 **SECTION XXIII. M/WBE ADVISORY COMMITTEE**

34 There is hereby created and established an advisory committee
35 to be known as the Minority/Women Business Enterprise (M/WBE)

1 Advisory Committee.

2 A. Membership

3 The M/WBE Advisory Committee shall consist of the
4 following thirteen (13) members:

5 1. One (1) black business owner certified as an M/WBE
6 by Palm Beach County;

7 2. One (1) Hispanic business owner certified as an
8 M/WBE by Palm Beach County;

9 3. One (1) women business owner certified as a M/WBE by
10 Palm Beach County;

11 4. One (1) representative of the Suncoast Chamber of
12 Commerce;

13 5. One (1) representative of the Minority Business
14 Development Center;

15 6. One (1) representative of the Latin American Chamber
16 of Commerce of the Palm Beaches;

17 7. One (1) representative of the Hispanic Human
18 Resources;

19 8. One (1) representative of the National Association
20 of Women in Construction;

21 9. One (1) representative of the National Association
22 of Women Business Owners;

23 10. One (1) representative of the Minority Contractors
24 Association;

25 11. One (1) representative of the Associated General
26 Contractors Association;

27 12. One (1) representative of the Small Business
28 Development Center; and

29 13. One (1) County Commissioner.

30 Members shall be appointed at large by the Board of
31 County Commissioners and shall serve for staggered terms of three
32 (3) years. Initially five (5) members shall be appointed for a
33 term of three (3) years, four (4) members shall be appointed for a
34 term of two (2) years and four (4) members shall be appointed for
35 a term of one (1) year. Vacancies shall be filled in the same

1 manner as the original appointments for the remainder of the vacant
2 term. Each member shall serve without compensation and may be
3 removed without cause by the Board of County Commissioners at any
4 time. Travel reimbursement is limited to expenses incurred only
5 for travel outside Palm Beach County necessary to fulfill board
6 member responsibilities when sufficient funds are budgeted and
7 available, and upon prior approval of the Board of County
8 Commissioners. No other expenses are reimbursable except
9 documented long distance telephone calls to the liaison County
10 department. All members must be Palm Beach County residents.
11 Members may not be members of more than two other advisory boards
12 appointed by the Board of County Commissioners.

13 B. Duties and Functions

14 The Committee shall have the following duties and
15 functions:

16 1. Review and evaluate the effectiveness of M/WBE
17 programs within Palm Beach County government; and

18 2. Monitor and evaluate the effectiveness of the
19 County's M/WBE Policies and Procedures, Resolutions and Ordinances
20 including their implementation by the various County departments;
21 and

22 3. Study and evaluate the necessity for further County
23 regulations and procedures regarding M/WBE participation; and

24 4. To receive and, where necessary, analyze,
25 information concerning the presence of discrimination in the
26 bidding and contracting process and to recommend to the Board of
27 County Commissioners further steps to alleviate such
28 discrimination;

29 5. Prepare, adopt and present an Annual Report to the
30 Board of County Commissioners;

31 6. Review Goal Setting Committees reports on
32 established project goals;

33 7. Research and review other jurisdictions M/WBE
34 programs;

35 8. Act as a conduit between Palm Beach County and the

1 community, industry, organizations, trade associations, chambers of
2 commerce and M/WBEs;

3 9. Plan and participate in education and training for
4 M/WBEs; and

5 10. Research and recommend to the Board of County
6 Commissioners race gender neutral alternatives which will assist
7 M/WBEs.

8 C. Meetings and Organization

9 The Committee shall meet on a regular basis. A majority
10 of members appointed shall constitute a quorum. In the presence of
11 a quorum, committee business shall be conducted by a vote of a
12 majority present. The meetings shall be governed by Roberts Rules
13 of Order. Reasonable public notice of all Committee meetings shall
14 be provided and all such meetings shall be open to the public at
15 all times.

16 D. Assistance to the Committee

17 The Committee may call upon any department or agency of
18 Palm Beach County, local, regional, state, or federal government
19 for information or advice in the performance of its work.

20 E. Chair and Vice Chair

21 A Chair and Vice Chair shall be elected by a majority
22 vote of the Committee and shall serve for a term of one year. The
23 duties of the Chair shall be:

24 1. Call Committee meetings and set the agenda for the
25 same;

26 2. Preside at Committee meetings;

27 3. Establish subcommittees, appoint subcommittee chairs
28 and charge subcommittees with specific tasks;

29 4. Perform other functions as the Committee may assign
30 by rule or order.

31 The Vice Chair shall perform the duties of the Chairperson in
32 the Chairperson's absence, and such other duties as the Chairperson
33 may assign;

34 If a vacancy occurs in the office of the Chairperson, the Vice
35 Chair shall become the Chair for the unexpired term. If a vacancy

1 occurs in the Office of the Vice Chair, the Committee will elect
2 another member to fill the unexpired term of the Vice Chair.

3 F. Advisory Only

4 The actions, decisions and recommendations of the
5 Committee shall not be final or binding on the Board of County
6 Commissioners but shall be advisory only.

7 G. Attendance

8 Members shall be automatically removed for lack of
9 attendance. Lack of attendance is defined as failure to attend
10 three (3) consecutive meetings or failure to attend more than one-
11 half of the meetings scheduled during a calendar year.
12 Participation for less than three-fourths of a meeting shall
13 constitute lack of attendance. Excused absences due to illness,
14 absence from the County, or personal hardship, if approved by vote
15 of the advisory board, shall not constitute lack of attendance.
16 Excused absences shall be entered into the minutes at the next
17 regularly scheduled meeting of the Committee. Members removed
18 under this section shall not continue to serve until a new
19 appointment is made and removal shall create a vacancy.

20 H. Conflict of Interest

21 Committee members shall be governed by the applicable
22 provisions of the Palm Beach County Ethics Ordinance upon its
23 adoption. Abstention from voting due to a conflict of interest on
24 more than three separate matters during a calendar year shall
25 result in automatic removal.

26 I. Continuation of Committee

27 No later than June 30, 1994, the Committee shall submit
28 a written recommendation to the Board of County Commissioners as to
29 whether the Committee should be continued or dissolved. If the
30 recommendation is to continue, the recommendation shall also
31 include any recommended revisions to this ordinance. The Board of
32 County Commissioners shall evaluate the recommendation of the
33 Committee and determine whether to continue or dissolve the
34 Committee no later than October 1, 1994. The Board of County
35 Commissioners shall continue to evaluate the Committee every three

(3) years, after a written recommendation is submitted by the Committee within ninety (90) days prior to the review date.

SECTION XXIV. AVAILABILITY ANALYSIS

The OEO under the direction of the County Administrator shall conduct an availability analysis every three years to determine the number of available M/WBEs in the market area. This information shall be used to make appropriate adjustments in the goals for M/WBE participation. Every five years, the County shall use the services of an independent consultant to conduct the market area availability analysis.

SECTION XXV. SUNSET

This ordinance shall sunset on September 30, 2002. At least six months prior to the sunset, the County will review all of the successes and failures of the M/WBE program and make a determination as to the need for a continuing M/WBE program.

SECTION XXVI. REPEAL OF LAWS IN CONFLICT

Ordinance No. 88-4, as amended by Ordinance No. 91-27 are hereby repealed. The policy established herein shall be consistent with Ordinance 90-25, as amended, the Palm Beach County Purchasing Ordinance. All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provisions of this ordinance are hereby repealed to the extent it conflicts with the specific subject matter of this Ordinance. Additionally Resolutions R 87-1491, R 88-1680, R 89-2129, and R 91-109, pertaining the M/WBE Committee are hereby rescinded.

SECTION XXVII. SEVERABILITY

If any section, paragraph, sentence, clause, phrase or word of this ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

SECTION XXVIII. INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this ordinance shall become and be made a part of the code of laws and ordinances of Palm Beach County, Florida. The sections of the ordinance may be renumbered or relettered to accomplish such and the word "ordinance" may be

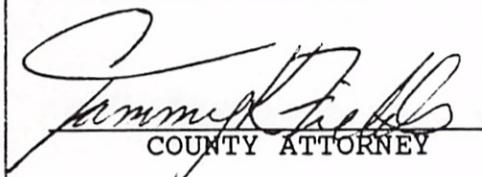
1 changed to "section", "article", or other appropriate word.

2 SECTION XXIX. EFFECTIVE DATE

3 The provisions of this ordinance shall become effective
4 October 1, 1991 or upon receipt of acknowledgement by the Secretary
5 of State whichever is later.

6 APPROVED AND ADOPTED by the Board of County Commissioners of
7 Palm Beach County, Florida, on the 17th day of September,
8 1991.

9 APPROVED AS TO FORM AND
10 LEGAL SUFFICIENCY

11 
12 JAMES R. FIELDS
13 COUNTY ATTORNEY

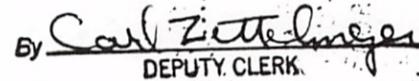
PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS


14 KAREN MARCUS
15 CHAIR

16 Acknowledgement by the Department of State of the State of
17 Florida, on this, the 23rd day of September, 1991.

18 Acknowledgement from the Department of State
19 received on the 27th day of September, 1991, at 3:49 P.M.,
and filed in the office of the Clerk of the Board of County
Commissioners of Palm Beach County, Florida.

JOHN B. DUNKLE, CLERK
Board of County Commissioners

By 
CARL ZETTELMEIER
DEPUTY CLERK